

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3877 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NOORMIYA @ RAJU RASULMIYA MANSURI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KC SHAH, A.G.P., for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Noormiya @ Raju Rasulmiya Mansuri has brought under challenge the detention order dated 5th April, 1996 rendered by the respondent No.1 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling foreign liquor and following prohibition offences have been registered in the Dani Limda Police Station, Ahmedabad :

CR No. 56/96 U/ss.66(1)(B), 65A,E, 81, 83 and Sec.116
of the Bombay Prohibition Act. 375
bottles of foreign liquor and beer,
valued at Rs.25,610/- with cash amount in
the sum of Rs.370/-. Pending
investigation.

It has been submitted that when the impugned order was passed the petitioner was in judicial custody.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. They indicate about two incidents, one occurring on 4.3.1996 and second occurring on 28.2.1996. Both the incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place with knife and/or with razor, as the case may be, leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the

Apex Court :-

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,
C.P., reported in 1995 (2) G.L.R. 1268, where
the incidents were quoted in paras : 11 and 12
of the citation and it has been submitted that
facts of the present case run almost parallel to
the facts before the Apex Court in Mustakmiya's
case (Supra).

6. In Mustakmiya's case reference has been made to
the earlier decision in the case of Piyush Kantilal Mehta
V/s. Police Commissioner, reported in 1989 Suppl. (1)
SCC 322, which was a case of a boot-legger facing
prohibition cases concerning a huge quantity of foreign
liquor. There also general statements of the witnesses
were recorded similar to the statements in the present
case. The statements recorded in Mustakmiya's case were
more grave in nature. It is, therefore, submitted that
the present case is squarely covered by Mustakmiya's case
which has in turn referred to Piyush Kantilal Mehta's
case (Supra).

7. In reply Mr.K.C.Shah, learned A.G.P. for the
State has relied upon a decision in the case of Mrs.
Harpreet Kaur Harvinder Singh Bedi V/s. State of
Maharashtra and anr., reported in A.I.R. 1992 SC 979.
Comparing the facts of the present case with the facts in
the case before the Supreme Court, it clearly appears
that the decision in Mrs.Harpreet Kaur's case (supra)
would not be applicable.

8. There are other grounds of challenge levelled
against the impugned order of detention. However, in
view of the fact that the petitioner would succeed
directly on the strength of the decision of Mustakmiya's
case (supra), it is not necessary to deal with the other
grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed
and set aside. The petitioner - detenu Noormiya @ Raju
Rasulmiya Mansuri shall be forthwith set at liberty if he
is not required to be detained in any other case. Rule
made absolute accordingly.

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